

## Department of the Army, DoD

## § 564.54

of this section, the United States assumes an obligation to settle administratively limited classes of claims relating to activities of the National Guard and the Air National Guard.

### § 564.53 Definitions.

As used in §§ 564.51 to 564.58, the following terms shall have the meaning hereinafter set forth:

(a) *Claim*. A written demand for payment in money.

(b) *Private property*. Real or personal property, excluding property owned by any government entity, Federal, State, city, county, or town, and excluding stocks, bonds, choses in action, debts, and insurance policies.

(c) *Camps of instruction*. Regularly scheduled training for units in organized camps, or bivouacs and maneuvers away from such camps constituting part of such training.

(d) *While en route thereto or therefrom*. The period of time during which a unit as distinguished from its individual members is travelling from its rendezvous to a camp of instruction or return, or from the camp of instruction or on a regularly scheduled maneuver and return thereto, and the routes followed by the unit. The term does not include the movement of individuals.

(e) *Proximate cause*. No precise definition of this term can be given. Whether acts or omissions of personnel constitute proximate cause must be determined in accordance with the local law. In general, an act or omission may be said to have been a proximate cause of the accident or incident if it was one of the impelling forces resulting in the accident or incident. For example, in a rear-end collision, the failure of the driver of the following car to stop in time is said to be the proximate cause of the accident. But, if the driver of the leading car stopped so suddenly and without warning that the second car, using the utmost diligence, could not have stopped, the conduct of the driver of the leading car would be said to have been the proximate cause of the accident. An act or omission without the existence of which the accident or incident would not have occurred but which cannot be said to have brought it about is a condition and would not constitute a basis for liability, or, if

committed by the claimant, would not constitute a basis for denial of his claim. For example, violations of statutes or ordinances providing standards of safety may be negligence in themselves, but may not constitute the bases of liability or for denial of a claim.

(f) *Scope of employment*. Scope of employment is determined in accordance with the law of the place where the accident or incident occurred, except that statutes in derogation of the common law, such as statutes creating a presumption that an employee is in scope of employment if using the employer's car with permission, are not controlling. An act or omission is within the scope of employment if such activity is expressly or impliedly directed or authorized by competent authority or is at least in part intended to further the mission of the unit or organization, or the interests of the National Guard or the Air National Guard. In determining whether an act or omission was within the scope of employment, consideration must be given to all the attendant facts and circumstances, including the time, place, and purpose thereof; whether it was in furtherance of the mission of the unit of the National Guard or Air National Guard; whether it was usual for or reasonably to be expected of personnel of the classification and grade involved; and whether the instrumentality causing the damage or injury resulted was property of the National Guard or Air National Guard, or of a State or the Federal Government being used by the National Guard or Air National Guard.

### § 564.54 Claims payable.

Claims for damage to or loss of private property proximately resulting from authorized activities incident to the operation of camps of instruction, including maneuvers, field exercises, training of units and personnel, movement of vehicles, operation of aircraft, maintenance and support of units and personnel, tortious acts or omissions of

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military personnel or civilian employees of the National Guard or Air National Guard in the scope of employment, and claims arising under a contract, executed incident to camps of instruction, even though legally enforceable under the express terms of the contract and no other, are payable under §§ 564.51 to 564.58.

### § 564.55 Claims not payable.

(a) *Contributory negligence.* Negligence or wrongful act of the claimant or of his agent or employee, a proximate cause of the accident or incident, bars a claim. The law of the place where the accident or incident occurred will be followed in determining whether contributory negligence is present but the doctrine of comparative negligence will not be applied.

(b) *Personal injury.* Claims for personal injury are not cognizable under the act of §§ 564.51 to 564.58.

(c) *Use and occupancy.* Claims for use and occupancy, payment of which is governed by the terms of a lease or contract, are not cognizable under §§ 564.51 to 564.58.

### § 564.56 Action by claimant.

(a) *Who may present a claim.* A claim for damage to or loss of private property may be presented by the owner, or his agent or legal representative. The word "owner", as so used, includes bailees, lessees, mortgagors, conditional vendors, and subrogees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. If filed by an agent or legal representative, the claim should be filed in the name of the owner, signed by such agent or legal representative, showing the title or capacity of the person signing, and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary. If filed by a corporation the claim should show the title or capacity of the officer signing it and be accompanied by evidence of his authority to act. In case of the death of the proper claimant, if it appears that no legal representative has been or will be appointed, the claim may be presented by any person who, by reason of the family relationship, has in fact in-

curred the expense for which the claim is made.

(b) *Form of claim.* A claim shall be submitted in the form of a statement signed by the claimant, setting forth his address, and stating briefly all the facts and circumstances relating to the damage for which compensation is claimed, including a description of the property, evidence of its value, the nature and extent of the damage, the date and place such damage was incurred, the agency by which it was caused, if known, and the amount. Standard Form 95 (Claim for Damage or Injury), appropriately modified by deleting references to "injury" and "personal injury," may be used for this purpose. The claim and all papers accompanying it which are signed by the claimant should bear like signatures.

(c) *Time within which claim must be presented.* A claim cognizable under §§ 564.51 to 564.58 must be submitted within two years of the date of occurrence of the accident or incident.

(d) *Place of filing.* A claim cognizable under §§ 564.51 to 564.58 must be presented in writing to the adjutant general, or his duly authorized representative, of the State, Territory, Commonwealth, or District of Columbia, having jurisdiction over the personnel or unit involved in the accident or incident out of which the claim arose, or to the office of the Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

(e) *Evidence to be submitted by claimant—(1) General.* A claim for damage to or loss of private property must be specific and substantiated by evidence of the damage or loss. A mere statement that such property was damaged or lost and that a certain amount is a fair compensation therefor is not sufficient to support a claim.

(2) *Motor vehicles, buildings, fences, and other structures.* The claimant must submit, if repairs or replacement has been effected, itemized bills therefor, signed and certified as just and correct by the repairman or suppliers, together with evidence of payment thereof, if made; if repairs or replacement has not been effected, an estimate of the cost thereof signed by a person competent to effect such repairs or replacement.